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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,559	03/24/2004	Vincent K. Jones	070915B1/QUALP693USA	8004
70797	7590	04/24/2008	EXAMINER	
Amin, Turocy & Calvin LLP 1900 E. 9th Street 24th Floor, National City Center Cleveland, OH 44114				TRAN, KHAI
ART UNIT		PAPER NUMBER		
2611				
			NOTIFICATION DATE	DELIVERY MODE
			04/24/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/809,559	JONES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	KHAI TRAN	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 January 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 14-23 and 25-32 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 14-23 is/are allowed.

6) Claim(s) 25 is/are rejected.

7) Claim(s) 26-32 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

1. The amendment filed 1/31/2008 has been entered. Claims 14-23, 25-32 are pending in this Office action.

### ***Response to Arguments***

2. Applicant's arguments filed 1/31/2008 have been fully considered but they are not persuasive.

Applicant argues that the independent claim 25 (from which claims 26-28 depend) recites transmitting a first data packet to a second station using a first wireless communication protocol, the first wireless communication protocol is "predetermined using one or more attributes of the second station; and receiving a second data packet from the second station, the second data packet transmitted using a second wireless communications protocol, and the second wireless communication protocol is predetermined using one or more attributes of the first station. Scheibel et al. fail to teach or suggest these claimed features. The cited reference is silent regarding determining wireless communication protocols using one or more attributes of the second station or the first station. Rather, in Scheibel et al. the first communication protocol is determined based on bandwidth utilization, a property of the wireless communication channel instead of attributes of the second station (col. 3, lines 42-55; Scheibel et al.). In addition, the second communications protocol is determined as to "maximize the likelihood of successful transfer" (col. 4, line 28; Scheibel et al.), instead of using one or more attributes of the first station. Therefore, Scheibel et al. fails to

teach or suggest each and every element of the subject claims. Accordingly, this rejection should be withdrawn.

In response to Applicants's argument that Scheibel et al disclose using one or more attributed of the first station such as a modulation rate comprising 64-ary quadrature amplitude modulation (QAM) or 16-ary QAM (abstract, figures 1-3, col. 2 lines 19-44, col. 3 lines 42-47, col. 4 lines 23-49).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Scheibel et al (U.S. Pat. 6,212,240).

Regarding claim 25, Scheibel et al disclose a method of wireless communication between a first station and a second station, the method comprising:

Transmitting a first data packet to a second station using a first wireless communication protocol, the first wireless communication protocol is predetermined using one or more attributes of the second station (abstract, Figures 1-3, col. 2 lines 19-44, col. 3 lines 42-47, col. 4 lines 23-49);

receiving a second data packet from the second station, the second data packet transmitted using a second wireless communication protocol, and the second wireless communication protocol is predetermined using one or more attributes of the first station (abstract, figures 1-3, col. 2 lines 19-44, col. 3 lines 42-47, col. 4 lines 23-49).

***Allowable Subject Matter***

5. Claims 14-23 are allowed.
6. Claims 26-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter: Scheibel et al fail to disclose at the first station, transmitting acknowledgement packets to the second station in response to data packets received from the second station, using a first acknowledgement modulation and a first acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station; at the second station, transmitting acknowledgement packets to the first station in response to the data packets received from the first station, using a second acknowledgement modulation and a second acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station, wherein the first data rate is distinct from at least one of the second data rate, the first acknowledgement rate, or the second acknowledgement rate.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

/Khai Tran/

Primary Examiner, Art Unit 2611